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No. 288

In the Supreme Court of the United States

OCTOBER TERM, 1960

AMERICAN AUTOMOBILE ASSOCIATION, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

J. LEE RANKIN,
Solicitor General,
Department of Justice,
Washington 25, D.C.

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In its reply to the memorandum for the United States in opposition, petitioner denies that this case presents the same question as *New Jersey Automobile Club* v. *United States,* also pending on petition for certiorari (No. 140); and it asserts that, in contrast to the *New Jersey* case where the Court of Claims found that the method of accounting used by that taxpayer did not clearly reflect its income, here the taxpayer's method of accounting was "realistic", "in accord with generally accepted accounting principles * * * and clearly reflected its net income". (Reply, p. 2.)

We point out, however, that the Court of Claims treated both this case and the *New Jersey* case as presenting essentially the same contentions as were re-

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jected by this Court in *Automobile Club of Michigan* v. *Commissioner*, 353 U.S. 180. Thus, in its opinion in *New Jersey Automobile Club* v. *United States*, the court stated (181 F. Supp. 250, 262–263):

> In *Automobile Club of Michigan* v. *Commissioner*, 353 U.S. 180, 77 S. Ct. 707, 1 L.Ed. 2d 746, rehearing denied, 1957, 353 U.S. 989, 77 S. Ct. 1279, 1 L.Ed. 2d 1147, the Supreme Court dealt with the same method of treatment of prepaid automobile club membership dues used by the plaintiff in the case at bar. For the reasons stated in *American Automobile Association* v. *United States*, Ct. Cl., 181 F. Supp. 255, we hold that the Court's decision in *Automobile Club of Michigan* precludes us from overruling the Commissioner's determination that the plaintiff's method of accounting does not clearly reflect income.

In its opinion in the instant case the Court of Claims stated (pp. 5–6):

> * * * we agree with the Government's contention that the method of treatment of prepaid automobile club membership dues employed by the plaintiff was dealt with by the Supreme Court in *Automobile Club of Michigan* v. *Commissioner*, 353 U.S. 180, rehearing denied, 353 U.S. 989 (1957), and was held to be, at least for Federal income tax purposes, "purely artificial." * * *
>
> The Commissioner of Internal Revenue had determined that this method of accounting—which is essentially the same method used by the plaintiff in the case at bar—did not clearly reflect income. * * * Although it would ap-

pear that *Automobile Club of Michigan* does not expressly rule out deferral of income, we are constrained to interpret this language [in the Court's opinion] as a rejection by the Supreme Court of the accounting method advanced by plaintiff in the case at bar.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

SEPTEMBER 1960.

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